

ESSEX SUPERIOR COURT

Case Summary
Civil Docket

FILED
CLERK'S OFFICE

ESCV2003-02151

Curcuru v Massachusetts Bay Transportation Authority et al

File Date	11/13/2003	Status	Disposed: transfered to other court (dtrans)
Status Date	03/19/2004	Session	C - Civil-CtRm 3 (Lawrence)
Origin	1	Case Type	B99 - Misc tort
Lead Case		Track	F

Service	02/11/2004	Answer	04/11/2004	Rule 12/19/20	04/11/2004
Rule 15	04/11/2004	Discovery	09/08/2004	Rule 56	10/08/2004
Final PTC	11/07/2004	Disposition	01/06/2005	Jury Trial	Yes

PARTIES

Plaintiff Christina R. Curcuru Active 11/13/2003	Private Counsel 546442 Timothy Lynch Swartz McKenna & Lynch LLP 45 School Street Old City Hall Boston, MA 02108- Phone: 617-367-2882 Fax: 617-367-2289 Active 11/13/2003 Notify
Defendant Massachusetts Bay Transportation Authority Served: 12/18/2003 Answered: 12/22/2003 Answered 12/22/2003	Private Counsel 437900 Paul J. Sahovey Mass Bay Transportation Authority 10 Park Plaza Transportation Building Boston, MA 02116 Phone: 617-222-3189 Fax: 617-222-3194 Active 01/07/2004 Notify
Defendant Amtrak National Railroad Passenger Corp Served: 12/05/2003 Answered: 12/31/2003 Answered 12/31/2003	Private Counsel 629644 Stephen E. Hughes Bonner Kiernan Trebach & Crociata 1 Liberty Square 6th floor Boston, MA 02109 Phone: 617-426-3900 Fax: 617-426-0380 Active 03/19/2004 Notify

ENTRIES

Date	Paper	Text
11/13/2003	1.0	Complaint & civil action cover sheet filed
11/13/2003		Origin 1, Type B99, Track F.
12/05/2003	2.0	SERVICE RETURNED: Amtrak(Defendant) by certified mail
12/22/2003	3.0	ANSWER: Massachusetts Bay Transportation Authority(Defendant)
12/31/2003	4.0	ANSWER and CROSSCLAIM: Amtrak
01/20/2004	5.0	ANSWER by Massachusetts Bay Transportation Authority to CROSSCLAIM of Amtrak
02/04/2004	6.0	SERVICE RETURNED: Massachusetts Bay Transportation Authority(Defendant)

A TRUE COPY ATTEST

DEPUTY ASST. CLERK

ESSEX SUPERIOR COURT

Case Summary

Civil Docket

ESCV2003-02151

Curcuru v Massachusetts Bay Transportation Authority et al

Date	Paper	Text
03/19/2004	7.0	Certified Copy of Petition for Removal to the United States District Court filed by Amtrak
03/19/2004	8.0	Case REMOVED this date to US District Court of Massachusetts

EVENTS

Date	Session	Event	Result
11/15/2004	Civil-CtRm 3 (Lawrence)	Status: Review Annual Fee	Event canceled not re-scheduled

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT

C.A. NO. 2003-2151-C

CHRISTINA R. CURCURI,
Plaintiff,

v.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY and
AMTRAK,
Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff, Christina Curcuro, by and through her attorneys, SWARTZ MCKENNA & LYNCH, LLP, for her causes of action against the above named Defendants, Massachusetts Bay Transportation Authority and Amtrak, avers and states as follows:

PARTIES

1. Plaintiff, Christina Curcuro, is an individual with an address in Gloucester, County of Essex, Commonwealth of Massachusetts.
2. Defendant Amtrak is a corporation with a principle place of business located at 60 Massachusetts Avenue, NE, Washington D.C. At all relevant times, Amtrak was a common carrier.
3. Defendant Massachusetts Bay Transportation Authority (hereinafter MBTA) is an independent body politic with a usual place of business at 10 Park Plaza; Room 3910; Boston, Suffolk County, Massachusetts. At all relevant times, MBTA was a common carrier.

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DEPUTY ASST. CLERK

FACTS

4. On or about November 27, 2001, Defendants sold Plaintiff Christine Curcuru a train fare and thereby making her a lawful passenger on a train in the possession, custody and control of Defendants MBTA and Amtrak.
5. At that time and place an employee of Defendants MBTA and Amtrak lured Ms. Curcuru into an empty train car.
6. Upon arriving in the train, the Defendants' employee confronted Ms. Curcuru with sexual advances.
7. Ms. Curcuru denied the Defendants' employee's sexual advances, at which time she was not allowed to exit the empty train car.
8. Upon becoming imprisoned against her will in the empty train car, Ms. Curcuru became fearful and apprehensive for her safety.
9. After becoming imprisoned against her will in the empty train car, the Defendants' employee removed his clothing in such a manner as to lewdly and indecently expose himself.
10. Prior to allowing Ms. Curcuru to leave the empty train car, the Defendants' employee in a most lewd and indecent manner masturbated in her presence until he ejaculated.
11. As a direct and proximate result, Plaintiff suffered physical, emotional, mental and economic damages.

COUNT I
(Negligence)

12. Plaintiff repeats, reavers and incorporates by reference the allegations contained in the above paragraphs as if expressly set forth herein and further states as follows.
13. Defendants owed its lawful passengers and all train occupants, including Ms. Curcuru, a duty to provide reasonably safe premises and as common carriers owed a duty of

exercising the highest degree of care for the safety of Plaintiff consistent with the proper transaction of its business.

14. The Defendants breached their duty to provide reasonably safe premises by not supplying adequate security and safety measures to protect their passengers.
15. As a direct and proximate result of Defendants failing to supply reasonably adequate safety and security measures to their passengers, Defendants caused Ms. Curcuru to be falsely imprisoned and sexually assaulted in a most lewd, indecent and embarrassing manner, thereby suffering severe physical, emotional, mental and economic damages.

WHEREFORE, Plaintiff prays for judgment against Defendants MBTA and Amtrak, jointly and severally, for compensatory damages, punitive damages, attorney's fees, costs and interest.

COUNT II
(Negligent Selection/Hiring)

16. Plaintiff repeats, reavers and incorporates by reference the allegations contained in the above paragraphs as if expressly set forth herein and further states as follows.
17. Defendants, as common carriers, owed a duty of exercising the highest degree of care for the safety of Plaintiff consistent with the proper transaction of its business when hiring their employees.
18. Defendants owed, at least, a duty to exercise reasonable care in the selection and hiring of their employees.
19. Defendants knew or in the exercise of reasonable care should have known their employee was unworthy or unfit by his habits, temperament or nature to deal with persons invited to their premises.
20. Defendants breached their duty of care by hiring and selecting an employee that was unfit to deal with the public and Defendants' invitees and customers, including Ms. Curcuru.

21. As a direct and proximate result of Defendants failing to exercise reasonable care in the selection and/or hiring of their employee, Defendants caused Ms. Curcuro to be falsely imprisoned and sexually assaulted in a most lewd, indecent and embarrassing manner thereby suffering severe physical, emotional, mental and economic damages.

WHEREFORE, Plaintiff prays for judgment against Defendants MBTA and Amtrak, jointly and severally, for compensatory damages, punitive damages, attorney's fees, costs and interest.

COUNT III
(Negligent Retention)

22. Plaintiff repeats, reavers and incorporates by reference the allegations contained in the above paragraphs as if expressly set forth herein and further states as follows.
23. Defendants, as common carriers, owed a duty of exercising the highest degree of care for the safety of Plaintiff consistent with the proper transaction of its business when retaining their employees.
24. Defendants owed, at least, a duty to exercise reasonable care in the retention of their employees.
25. Defendants knew or in the exercise of reasonable care should have known their employee was unworthy or unfit by his habits, temperament or nature to deal with the persons invited to their premises and should not have been retained.
26. Defendants breached their duty of care by retaining an employee that was unfit to deal with the public and Defendants' invitees and customers, including Ms. Curcuro.
27. As a direct and proximate result of Defendants failure to supply reasonably adequate safety and security measures to their passengers, Defendants caused Ms. Curcuro to be falsely imprisoned and sexually assaulted in a most lewd, indecent and embarrassing manner thereby suffering severe physical, emotional, mental and economic damages.

WHEREFORE, Plaintiff prays for judgment against Defendants MBTA and Amtrak, jointly and severally, for compensatory damages, punitive damages, attorney's fees, costs and interest.

COUNT IV
(Negligent Supervision)

28. Plaintiff repeats, reavers and incorporates by reference the allegations contained in the above paragraphs as if expressly set forth herein and further states as follows.
29. Defendants, as common carriers, owed a duty of exercising the highest degree of care for the safety of Plaintiff consistent with the proper transaction of its business when supervising their employees.
30. Defendants owed, at least, a duty to exercise reasonable care in the supervision of their employees.
31. Defendants breached their duty of care by failing to supervise an employee that was unfit to deal with the public and Defendants' invitees and customers, including Ms. Curcuru.
32. As a direct and proximate result of Defendants failure to supervise their employee, Defendants caused Ms. Curcuru to be falsely imprisoned and sexually assaulted in a most lewd, indecent and embarrassing manner thereby suffering severe physical, emotional, mental and economic damages.

WHEREFORE, Plaintiff prays for judgment against Defendants MBTA and Amtrak, jointly and severally, for compensatory damages, punitive damages, attorney's fees, costs and interest.

COUNT V
(Violation of Massachusetts General Laws c.93A)

33. Plaintiff repeats, reavers and incorporates by reference the allegations contained in the above paragraphs as if expressly set forth herein and further states as follows.

34. Defendants engaged in unfair or deceptive acts or practices within the meaning of Massachusetts General Law Chapter 93A. The Defendant engaged in unfair or deceptive acts or practices in a number of different ways as described above. The Defendant's unfair or deceptive acts or practices include, but are not limited to:

- a. Defendants sold services to Ms. Curcuro which rendered her in a vulnerable state and in the care and custody of Defendants as common carriers and failed to safeguard her while she was in their custody;
- b. Defendants failed to perform an adequate background check on their employee who was put in a position of dealing with the public which ultimately resulted serious harm and injury to Ms. Curcuro;
- c. Defendants failed to instruct, advise, consult with, warn or otherwise notify Ms. Curcuro, or any of their consumers, of the Defendants' philosophy, systems, policies, procedures and/or protocols regarding the Defendants' failure to perform an adequate background check or to perform criminal background checks on persons who would be in charge of her;
- c. Defendants should have investigated said employee's background upon learning of these serious charges and should not have allowed him unsupervised access to vulnerable people such as Ms. Curcuro;

35. The above unfair or deceptive acts or practices or unfair method of competition occurred while the Defendants were engaged in a trade or commerce as those terms are defined under Massachusetts General Law Chapter 93A. Defendants have engaged in "trade" and/or "commerce" by offering for sale and selling common carrier services. By charging consumers for said services, Defendants transacted business in trade or commerce as defined by Massachusetts General Laws Chapter 93A.

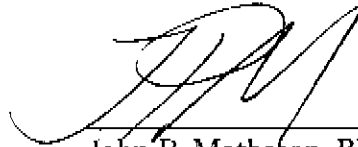
36. As a direct and proximate result of the unfair or deceptive acts or practices or unfair method of competition engaged in by the Defendants, the Plaintiff suffered the injuries described above.
37. On or about September 9, 2003, the Plaintiff sent Defendants a demand for settlement, via certified mail.
38. Plaintiff's demand letters complied in all respects with the requirements of Massachusetts General Law Chapter 93A and is incorporated herein.
39. The Defendants failed to adequately respond to said demand letter as required by Massachusetts General Law Chapter 93A.
40. As a direct and proximate result of Defendants failure to supervise their employee, Defendants caused Ms. Curcuru to be falsely imprisoned and sexually assaulted in a most lewd, indecent and embarrassing manner thereby suffering severe physical, emotional, mental and economic damages.

WHEREFORE, Plaintiff prays that she be awarded her full, fair and complete compensation, multiple or treble damages as allowed under Massachusetts General Law Chapter 93A against Defendants MBTA and Amtrak, jointly and severally, for compensatory damages, punitive damages, attorney's fees, costs and interest.

Jury Demand

Plaintiff hereby demands a Trial by Jury.

Respectfully submitted,
Christina Curcuru,
By her attorneys,



John P. Matheson, BBO# 651742
Timothy G. Lynch, BBO# 546442
Fredric Swartz, BBO# 489560
SWARTZ MCKENNA & LYNCH, LLP
Old City Hall
45 School Street
Boston, MA 02108
Tel: 617-367-2882
Fax: 617-367-2289

Handwritten initials

CIVIL ACTION COVER SHEET	DOCKET NO(S) <i>#200.3-2151-C</i>	Trial Court of Massachusetts Superior Court Department County: <u>Essex</u>	
PLAINTIFF(S) CHRISTINA R. CURCURU		DEFENDANT(S) MASSACHUSETTS BAY TRANSPORTATION AUTHORITY AND AMTRAK	
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Timothy G. Lynch 617 367 2882 Swartz McKenna & Lynch 45 School St., Boston, MA 02108 Board of Bar Overseers number 546442		ATTORNEY (If known)	
Origin code and track designation			
Place an x in one box only:			
<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Court Appeal c.231, s.98 & 104 (After trial) (X)		
<input type="checkbox"/> 2. F02 Removal to Sup.Ct.C.231, s. 104 (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after rescript relief from judgment/Order (Mass.R.Cov.P.60) (X)		
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct.C.231, s. 102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)			
CODE NO. <u>B99</u>	TYPE OF ACTION (specify) <u>Tort-negligence-sexual</u>	TRACK (F)	IS THIS A JURY CASE? (X) Yes () No
The following is a full, itemized and detailed statement of the facts of which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.			
TORT CLAIMS			
(Attach additional sheets as necessary)			
A.	Documented medical expenses to date:		
1.	Total hospital expenses.....	\$	
2.	Total Doctor expenses.....	\$	
3.	Total chiropractic expenses.....	\$	
4.	Total physical therapy expenses.....	\$	
5.	Total other expenses (describe).....	\$	
	Subject	\$	-
B.	Documented lost wages and compensation to date.....		\$
C.	Documented properly damages to date.....		\$
D.	Reasonably anticipated future medical and hospital expenses.....		\$
E.	Reasonably anticipated lost wages.....		\$
F.	Other documented items of damages (described).....		\$
G.	Brief description of plaintiff's injury, including nature and extent of injury (describe) Plaintiff was subjected to unwanted sexual advances and was imprisoned against her will by an employee of Defendants. As a result, Plaintiff suffered from physical, emotional, mental and economic damages.		\$ greater than
	TOTAL	\$	<u>\$25,000.00</u>
CONTRACT CLAIMS			
(Attach additional sheets as necessary)			
Provide a detailed description of claim(s):			
\$			
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT			
I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.			
Signature of Attorney of Record <i>[Signature]</i>			DATE: <u>11-10-3</u>

AOTC-6 mtc005 - 11/99

A.O.S.C. 1-2000

CIVIL ACTION COVER SHEET
INSTRUCTIONSA TRUE COPY, ATTEST
[Signature]
DEPUTY ASST. CLERK

Commonwealth of Massachusetts

**County of Essex
The Superior Court**

CIVIL DOCKET# **ESCV2003-02151-C**

RE: **Curcuru v Massachusetts Bay Transportation Authority et al**

TO: Timothy Lynch, Esquire
Swartz McKenna & Lynch LLP
45 School Street
Old City Hall
Boston, MA 02108-

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	02/11/2004
Response to the complaint filed (also see MRCP 12)	04/11/2004
All motions under MRCP 12, 19, and 20 filed	04/11/2004
All motions under MRCP 15 filed	04/11/2004
All discovery requests and depositions completed	09/08/2004
All motions under MRCP 56 filed and heard	10/08/2004
Final pre-trial conference held and firm trial date set	11/07/2004
Case disposed	01/06/2005

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session **C** sitting in
CtRm 3 (Lawrence) at Essex Superior Court.

Dated: 11/13/2003

Thomas H. Driscoll Jr.,
Clerk of Courts

BY:

Kevin Jones
Assistant Clerk

Location: CtRm 3 (Lawrence)
Telephone: (978) 687-7463

Check website as to status of case: <http://ma-trialcourts.org/tcic>

A TRUE COPY, ATTEST


DEPUTY ASST. CLERK

2

(TO PLAINTIFF'S ATTORNEY: Please Circle Type of Action Involved: - TORT - MOTOR VEHICLE TORT -
CONTRACT - EQUITABLE RELIEF - OTHER.)

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 03-2151-C

CHRISTINA R. CURCURI, Plaintiff(s)

v.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
and AMTRAK, Defendant(s)

SUMMONS

To the above named Defendant: AMTRAK

You are hereby summoned and required to serve upon John P. Matheson, Swartz McKenna & Lynch,
plaintiff's attorney, whose address is 45 School Street, Boston, MA 02108, an answer to the
complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the
day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Lawrence either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

WITNESS, SUZANNE V. DeVECCHIO, Esquire, at Salem, the 20th
day of November, in the year of our Lord two thousand 03.

Thomas H. Russell Jr.

[Signature]
Clerk
A TRUE COPY ATTEST
DEPUTY ASST. CLERK

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
C.A. NO.: 03-2151-C

CHRISTINA R. CURCURI,
Plaintiff,

v.

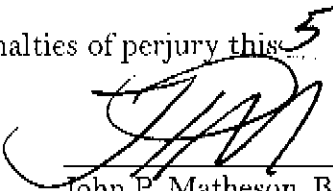
MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY and
AMTRAK,
Defendants.


AFFIDAVIT OF COMPLIANCE WITH MASS.R.CIV.P. 4(f)

I, John P. Matheson, do hereby attest to and depose the following:

1. I am attorney of record representing Christina R. Curcuro, Plaintiff in the above entitled matter.
2. Pursuant to Massachusetts Rule of Civil Procedure 4(e), on November 20, 2003, my office mailed a copy of the Summons and Complaint to Defendant, Amtrak, via certified mail, return receipt requested.
3. Attached hereto is a copy of the return receipt signed by Amtrak, demonstrating personal delivery.

Signed under the pains and penalties of perjury this 5 day of December, 2003.


John P. Matheson, BBO# 651742

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p> <input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. </p> <p>1. Article Addressed to: NOV 26 2003</p> <p>AMTRAK 60 Mass Ave, NE Washington DC 20002-4285</p>	<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>70001670000109499247</p>
<p>PS Form 3811, August 2001</p>	<p>Domestic Return Receipt 102595-02-M-0935</p>